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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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No. 65] NEW DELHI, THURSDAY, APRIL 24, 1958/VAISAKHA 4, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th April 1958/27th Chaitra, 1880 (Saka)

S.O. 673.—In continuation of the Election Commission's notification No. 82/458/57 dated the 13th December, 1957, published in the Gazette of India, Extraordinary dated the 21st December, 1957 under section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment of the High Court of Madhya Pradesh at Jabalpur delivered by it on the 20th February, 1958, on the appeal filed before that Court by Shri Prabhu Charan, son of Shri Jhunnu, Ward 3, Ghogher, Rewa, against the order dated 22nd November, 1957, of the Election Tribunal Chhatarpur in Election Petition No. 458 of 1957.

IN THE HIGH COURT OF MADHYA PRADESH JABALPUR

FIRST APPEAL No. 136 OF 1957

Appellant.—Petitioner.—Respondent

Prabhu Charan s/o Shri Jhunnu, Ward 3, Ghogher, Rewa.—Shri Shiv Dutt alias Sri Shiv Dutt Upadhya, 93-D South Avenue, New Delhi.

Appeal by petitioner from the judgment of the Court of the Member, Election Tribunal, Chhatarpur presided in by Shri G. P. Bajpayee dated the 22nd November, 1957, in Election Petition No. 458 of 1957 Petitioner's election petition for declaring the election of the Respondent as void dismissed. Claim in appeal for reversal of the Order of the Member, Election Tribunal, Chhatarpur. Memo. of appeal presented by Shri Prabhu Charan appellant on 21st December, 1957.

The appeal coming on for final hearing on 12th February, 1958 and 13th February, 1958 before the Honourable the Chief Justice Shri M. Hidayatullah and the Honourable Shri Justice B. K. Choudhuri in the presence of Shri G. P. Singh with Shri J. C. Joshi Counsel for the appellant, and of Shri J. P. Saksena with Shri R. K. Tankha Counsel for the respondent, the following judgment was delivered by the Court.

CIVIL FIRST APPEAL No 136 OF 1957

Prabhu Charan

Vs

Shiv Dutta alias

Shiv Dutta Upadhyaya.

JUDGMENT

This is an appeal against an order of the Election Tribunal, Chhatarpur, dated 22nd November, 1957, in Election Petition No 458 of 1957

2. The matter arises out of the parliamentary election for the Rewa constituency in this State. The present appellant was a voter for that constituency. At the election eight candidates contested for the seat and one Shiv Dutt Upadhyaya, who is the respondent in this appeal, succeeded, having polled 41,745 votes. The present election petition as well as the appeal have been filed by the voter Prabhucharan presumably in the interest of one Smt Rama Mitra who polled 21,318 votes. The main contention on behalf of the appellant, (which was the same in the Tribunal below), is that by the allotment of multifarious symbols to the so-called Socialist Party there was confusion in the voting and the voters were not able to cast their votes as they would otherwise have, and that it also entailed a considerable amount of propaganda work against the other parties. He contends that not only the said Socialist Party had set up candidates for the parliamentary election but it had also set up candidates for the Legislative Assembly constituencies, and they were not allotted a uniform symbol for all the constituencies, as was the case with the recognized parties. The appellant also challenged before us, as he did before the Election Tribunal, the rules, which conferred upon the Election Commission power to issue directions and impose restrictions in the matter of allotment of symbols, as *ultra vires* the Representation of the People Act, 1951 (hereinafter referred to as the Act). He lastly contends that there was discrimination in the allotment of symbols and in the press notes imposing restrictions and conditions under which the symbols were to be allotted to the candidates. These, in short, are the submissions on which the present appellant went as an election petitioner before the Tribunal, but he failed. Hence the appeal.

3. The question of symbols is dealt with in the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 (hereinafter referred to as the Rules). Among these Rules are rules 5 and 10 which are impugned before us in part. It is provided in rule 5 that the Election Commission shall, by notification in the official Gazette, publish a list of symbols and may in the like manner amend such list. In furtherance of this rule the Election Commission published a list of 25 symbols, and these were the symbols to be used for the ensuing elections. Under sub-rule (2) of rule 5, in all constituencies other than council constituencies every candidate had to show his preference for symbols and had to include a declaration in his nomination paper as to the order in which he preferred three symbols. There is a proviso to sub rule (2) which reads as follows:

‘Provided that—

- (a) the choice to be made by a candidate under this sub-rule shall be subject to such restrictions as the Election Commission may think fit to impose in that behalf, and
- (b) where more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered and no other declaration as to symbol, shall be taken into consideration notwithstanding the eventual rejection of the said nomination paper.

Provided further that any non-compliance with the provisions of this sub-rule shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

The appellant contends that the provision in this rule about ‘such restrictions as the Election Commission may think fit to impose in that behalf’ was beyond the competence of the rule-making power of the Commission for reasons which we shall examine hereafter.

4 Rule 10 deals with allotment of symbols. It provides as follows:

- ‘10. Allotment of symbols—(1) If in any constituency other than a council constituency a poll becomes necessary under sub-section (1) of section 53, the returning officer shall, simultaneously with the preparation of the list of contesting candidates under sub-section (1) of section 38 consider the choice as respects symbols expressed by the contesting candidates in their nomination papers and shall, subject to

any general or special direction issued in this behalf by the Election Commission,—

- (a) allot a different symbol to such contesting candidate in conformity as far as practicable with his choice; and
- (b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.'

* * * * *

The appellant contends that the provision for controlling the operation of rule 10 by any general or special direction issued in that behalf by the Election Commission is also beyond the competence of the rule-making power.

5. The appellant also contends that in furtherance of these rules the Election Commission issued five press notes which are marked Exhibits P-18 to P-20, Ex. P-23 and Ex. P-42 in which recognition was given to four parties in India and all other parties were required to follow a procedure which, in essence, was controlled by rules not framed by the Central Government as required by section 169 of the Act. He contends that the Election Commission did not possess any rule-making power and any rules made by it to control the choice of symbols by the candidates are *ultra vires*. He also contends that in these press notes the Election Commission showed discrimination between one party and another, and that in the allotment of symbols there was further discrimination, with the result that the whole of the election was materially affected and the entire procedure followed by the Election Commission and the returning officer was capable of being challenged under section 100(1)(d)(iv) of the Act. He, therefore, contends that the election was void and that the rules themselves were defective and also void and *ultra vires*. Lastly, he contends that in a matter of this kind where there has been such a deep-seated confusion in the allotment of symbols requiring propaganda for several symbols by the same party, the election as a whole cannot be upheld because it is not known what would have been the result if the election had been with the allotment of symbols as required by the Act and the Rules.

6. We shall deal with these matters in detail now. The first question is about the powers of the Central Government to frame rules. Section 169 of the Act lays down as follows:

'169. Power to make rules.—The Central Government may, after consulting the Election Commission, by notification in the official Gazette, make rules for carrying out the purpose of this Act.'

* * * * *

We need not quote the specified powers of rule-making conferred by the second sub-section, because those special powers were not brought to our notice and were not in controversy. The case of the appellant is that the power to make rules has been conferred on the Central Government only, though in consultation with the Election Commission, and the Election Commission has not been conferred any power to make rules, on its own behalf. The learned counsel for the appellant read to us the press notes and pointed out that they were no more than supplementary rules, which the Election Commission had made. He stated that in framing rules 5 and 10, extracts from which we have quoted above, the Central Government gave away a power to the Election Commission not contemplated by section 169. According to him, all the rules had to be framed by the Central Government, though in consultation with the Election Commission, and not by the Election Commission, though the power was conceded to make directions. The Rules themselves are challenged because of the fact that they are defective in conceding such power.

7. We must go back to the scheme of elections as envisaged in the Constitution. Part XV on Elections in the Constitution has been described before this as a Code. It consists of six articles. The first article (324) says that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament shall be vested in a Commission (referred to in the Constitution as the Election Commission). Article 327 confers on Parliament the power to make law with respect to all matters relating to or in connection with elections to Legislatures. It provides that subject to the provisions of the Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections

to either House of Parliament or to the House or either House of Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. These two articles show that the conduct of elections is vested in the Election Commission, though the law is to be made by Parliament. In the making of the rules, section 169 of the Act brings the Central Government and the Election Commission together. The conduct of elections is by the Election Commission and the rule-making is assigned to the Central Government but in consultation with the Election Commission. The intent underlying section 169 is that the Central Government and the Election Commission together should frame such rules as are necessary for effectuating elections, the conduct of which is vested in the Election Commission. There is nothing in section 169 which shows that there are any limits to the powers to make rules. The rules have to be made for carrying out the purposes of the Representation of the People Act. So long as those purposes are borne in mind and a rule is made to effectuate them, the power cannot be said to be improperly exercised.

8. The contention of the appellant is that in the making of rules there has been a sub-delegation of the rule-making power to the Election Commission, which under cover of the power to impose restrictions and conditions has framed its own rules. The press notes are cited before us to show that the power has been exercised not to impose restrictions or conditions but has been utilized to frame rules which should properly have been framed by the Central Government in consultation with the Election Commission.

9. No doubt, the press notes to which our attention has been drawn are worded as rules and are generally worded. They are, however, in the nature of control and contain details of a policy under which the symbols are to be allotted to parties or to candidates. We may, at this stage, analyse the press notes to see what exactly they provided. The first press note (Ex. P-18) was issued on the 24th November 1956 by the Election Commission just prior to the present election. It was provided in it that as a result of the last elections, four parties had emerged because they had reached the necessary minimum number of votes, taking all elections together, which had been laid down by the Election Commission. In that press note the Election Commission restored the recognition of the Praja Party, Andhra, as a State party and allotted to it the symbol of the "Rising Sun" because it had secured the minimum *viz.* 3 per cent of the valid votes cast in the last General Elections to the Andhra Legislative Assembly. In the same press note the Election Commission observed that no candidate in future would be considered to have belonged to a recognized political party unless he had contested the election on the party's symbol and unless he had been officially adopted by the party and the fact had been formally intimated by the party to the Commission, the Chief Electoral Officer of the State or the Returning Officer of the constituency before the expiry of the last date for withdrawal of the candidates. The Election Commission also laid down that an unrecognized political party which applied for recognition would be asked by the Election Commission to provide evidence of the extent of its electoral support in a State or the country as a whole and its candidates should select one of the free symbols for all elections, intimate in advance to the Commission the symbol so selected and ensure that every candidate set up, selected that symbol as his first choice. The Election Commission made it clear that unless that procedure was followed no candidate set up by a political party would be considered to have belonged to that party at the time of its claim for recognition or continued recognition for the reservation of the symbol to be considered by the Commission. In the next press note (Ex. P-19) the Election Commission pointed out that six parties had applied to it for recognition in addition to the four All India or National Parties already recognized. The Election Commission mentioned among them the All India Socialist Party, Lucknow, which had been reorganised by Dr. Ram Manohar Lohia in 1955. The Election Commission stated in the press note that the claim of those six parties to recognition could only be decided after the results of the elections which were then to take place were available. According to the Election Commission, unless these parties held the necessary minimum which it had fixed for determining the conferral of the status of a recognized political party, these parties could not be so recognized. However, the Election Commission by its press note stated that efforts would be made to give these parties a common symbol all over the country, provided all the candidates preferred a common symbol as their first choice and intimated their names and also their choice to the Commission well in advance. The other press notes are not so material because they did no more than reiterate what was stated in the earlier press notes.

10. As a result of this the Socialist Party to which the petitioner claims to belong selected (we are informed) the symbol "Tree" as its first preference for all its candidates. We are also informed that the Party communicated this fact to the Election Commission and wanted that "Tree" should be allotted as a symbol to all the candidates which it was setting up. The result, however, was slightly different. No doubt, the symbol "Tree" was allotted to the candidates of this party in some of the constituencies but it was not uniformly allotted to its candidates in all the constituencies. Hence the grievance.

11. We have set out what the Election Commission did and we may revert to our discussion of the legal position. The rules which have been framed by the Central Government conferred on the Election Commission power to impose restrictions and also to issue directions for the allotment of symbols. No doubt, as we have said, these restrictions and directions savour of rules but there is no gainsaying that the Election Commission could have done the same thing without casting its press notes in the shape of rules as they appear. The vital question is: Could the Election Commission issue the directions or not and whether its directions amount to rule making? In our opinion, the directions which have been issued by the Election Commission do not amount to rule making. The power was already conceded by the Rules to the Election Commission and all that it has done is to effectuate the Rules as they stand, imposing certain restrictions in the matter of allotment of symbols. We may point out that the Rules which were framed were laid upon the table of both Houses of Parliament for a period of thirty days as required by sub-section (3) of section 169 of the Act. They must, therefore, be taken to be part and parcel of the Act itself.

12. Two authorities were cited before us from the English Courts: *Jackson Standfield and Sons v. Butterworth* [(1948) 2 All.E.R.558] and *Blackpool Corpn v. Locker* [1948—1 All E.R. 85, 91]. In the first case Scott, L. J. stated that where power is given in a manner analogous to the power conferred here on the Election Commission it may be regarded as equivalent to a concession of rule making power. According to the learned Lord Justice, the power conferred savours of delegation and the making of such directions of circulars is tantamount to legislation. We may point out that in that case of one of the other Lord Justices did not base his decision upon this point and decided the case upon a narrow issue, and the other learned Judge (Jenkins, J.) dissented from the view taken by Scott, L. J. In the second case also the decision was not uniform and the opinion was again that of Scott, L.J. While we have the greatest respect for the authority of such an eminent person; we think that it would be wrong for us to import the implications of administrative law as understood in England for the purposes of interpreting the Representation of the People Act in our own country. We have to go by the Constitution, the Representation of the People Act and the Rules. The Constitution vests the conduct of elections in the Election Commission and only leaves to Parliament the power to make laws. The Parliament in its wisdom has made the law that the Central Government in consultation with the Election Commission may make rules for effectuating the purposes of the Act. The Central Government in consultation with the Election Commission has framed rules in the matter of symbols and their allotment and has also laid down that those rules shall be subject to such restrictions or conditions as the Election Commission may think fit to impose. In our opinion, the restrictions and conditions, even if framed in the shape of rules, cannot be said to be rule making outside the purport of section 169. The power to make rules was already conferred on the Central Government and all that the Central Government has done is to make the Rules subject to such further restrictions and conditions as the Election Commission may deem fit. The Rules are being effectuated, and what the Election Commission has done is not to allot symbols except to recognised parties and has worked out the scheme for recognition of new parties. In that Scheme it has not only given recognition on the basis of the past election results but has also prepared a scheme under which new parties can make out a case for having a uniform symbols. In the same Press notes the Election Commission clearly pointed out that it might not be possible to allot the same symbol to a newly formed party for all constituencies but effort would be made as far as possible to give a uniform symbol to each new party or, at any rate, to most of its candidates. Reading the press notes and the law on the subject we are quite clear that the Election Commission has not indulged in any legislative act. All that it has done is to lay down a policy for the allotment of symbols for which ample justification appears in rule 10, which we are firmly of the view, is not *ultra vires* of the Central Government or beyond the powers of the Central Government under section 169 of the Act.

13. This leaves over the question whether there has been any discrimination in the allotment of symbols. No doubt, if some new party has been recognised and had been put on an equal plane with recognised parties, there would have been

room for complaint. All the parties which had contested the last elections and had secured the necessary minimum votes were recognised as political parties and allotted uniform symbols. There was no discrimination there. New parties which had not contested the last elections on a party basis were made to give evidence of their party strength and also to comply with certain conditions before a uniform symbol was to be allotted to them. All parties or individuals who were not within the category of recognised parties were to be on the same footing and we think that there was reasonable classification between the parties which had established their claim to recognition as political parties and parties which were just establishing that claim. There being uniformity among parties belonging to the second class, we do not think that there was discrimination. After all, there cannot be absolute equity before law and reasonable classification is perfectly justified. The Election Commission has classified all parties into two categories, viz., (1) those which had already been recognised, and (2) those which could claim to be recognised according to the policy laid down and where in the process of getting themselves recognised. We see a clear division and a very just classification in this, and we do not think that there was any discrimination in the Rules, in the press notes or in the action of the Election Commission.

14. The next question is whether there was any discrimination in the application of the Rules which the Election Commission made. No doubt, the Election Commission provided certain conditions precedent to the allotment of a uniform symbol. It made it a condition that all candidates belonging to an unrecognised party should show the same symbol as their first choice and should also intimate to the Election Commission that they were standing on a party ticket. We are informed that this was done. The Election Commission had made it clear that though efforts would be made to allot a common symbol to such a party, the result could not be guaranteed, and that till a party was recognised as a political party, there would be no special claim to any symbol out of the free symbols. In this also the Election Commission acted uniformly. It did not make one law for one party and another for another party. It applied a uniform standard, and so far as the operation was concerned, it is just possible that in some cases, the symbol which a party had claimed could not be allotted to it. It may be pointed out that the first choice of the so called Socialist Party was a "Tree" which was allotted to it in the Parliamentary constituency and in three Legislative Assembly Constituencies, and it was only in the remaining constituencies that that symbol was not allotted. We feel very doubtful whether we can take an overall account of all the elections for the purposes of this election petition, because in so far as this particular election is concerned, the choice of the candidate for the Socialist Party was for the symbol "Tree" and it was so allotted. No doubt, the allotment of a common symbol to a party leads to a certain simplification in the propaganda to be entered upon by the party, but it is to be noticed that the party itself came into being in 1955 and the allotment of symbols began towards the end of 1955, and the directions were finalised by the Election Commission as late as 24 December, 1956. We were told that the elections took place in the third week of February 1957 and all that happened was the loss of one month of election propaganda, which we do not think can be said to be substantial. No doubt, the recognised parties had as much as five years in which to canvas for their own symbol, but the fact that there is classification and the fact that those parties had contested the last elections and reached the minimum clearly show that they could have that advantage. If the present Socialist Party reaches the minimum laid down in this election it would have the same advantage over new parties and we are quite sure that such an argument at the instance of new parties would be resisted along the same lines by it.

15. Even if we were wrong in what we have stated above, it remains to consider whether the results of the elections were materially affected. Here, the figures of poll are significant. The total poll in this constituency amounted to 1,40,115. Of these, 94,522 were polled by the recognised parties and the balance was 45,593. Of these, the candidate in whose interest the present election petition seems to have been filed polled 21,381. That left only 24,212 votes. The difference between the Congress candidate who succeeded and the candidate favoured by the petitioner was 20,094. To overreach the poll of the successful candidate, the Socialist Party candidate would have had to secure more than 83 per cent. of the balance 24,212 votes. This, in our opinion, regard being had to the general percentage of votes secured by the candidate, would never have been possible. We are quite aware that parties which have a uniform symbol are in an advantage over others and it is likely that the Socialist Party would have snatched some votes from the successful candidate and other candidates of the recognised parties. But even so, we do not think that it has been sufficiently proved before us as was stated in *Vashist Narain v. Dev Chandra* (A.I.R. 1954 S. C. 513), that the result of

the election would have been materially affected by the allotment of a uniform symbol to this party. We may point out once again that the symbol which they did want, was allotted for this particular election, viz., the symbol of a "Tree". The party also got the same symbol for three Legislative Assembly constituencies. It was only in respect of five other Legislative Assembly constituencies that it got some other symbol and even there some of those candidates who had received other symbol, won the election. It is always a matter of speculation as to how far the symbol affected the result of the election. But we are aware that the allotment of symbol leads to a simplification of canvassing and propaganda, but beyond that it is very difficult to say that the allotment of a symbol has any fundamental effect on an election. We feel satisfied in the present case, looking to the figures of the poll, that the allotment of a uniform symbol to the party in all the constituencies would not have materially affected the result in the parliamentary constituency where the symbol claimed had been allotted to the candidate in whose interest the petitioner has filed this petition.

16. For these reasons we are satisfied that the Rules made are perfectly valid. We are also satisfied that the directions issued by the Election Commission did not infringe the Constitution or the Act. We are satisfied that there was no discrimination. We are further satisfied that the result of the poll was not materially affected by the allotment of different symbols to different candidates of the so called Socialist Party. We thus see no reason to interfere.

17. The appeal fails and is dismissed with costs. Counsel's fee nil as no fees are certified.

Sd/- M. Hidayatullah,
Chief Justice.
20th February, 1958.

Sd/- B. K. CHOUDHURI,
Judge.
20th February, 1958.

SCHEDULE OF COSTS

Particulars	Appellant	Respondent
	Applicant	Non-applicant
Court fee on memo of appeal and application	20-0-0	..
Court fee on power of attorney	3-8-0	3-6-0
„ Exhibits	9-8-0	..
„ Processes]	2-0-0	..
Counsel's fee on Rs.	C. not filed	C. not filed
Fee for preparation of paper book
TOTAL	35-0-0	3-6-0

[No. 82/458/57.]

By Order,
DIN DAYAL, Under Secy.

